Yeow Ho Bun v Tee Beng Gak & Anor

HIGH COURT (MELAKA) — ORIGINATING SUMMONS NO 24–227 OF 1996
LOW HOP BING J
8 OCTOBER 2003

Trust and Trustees *— Express trust — Construction of trust deed — Government paid compensation upon acquiring property subject to trust — Validity of trust deed — Whether trustee held property upon trust for himself and for first respondent — Interests of persons entitled to benefit of property should survive acquisition — Whether compensation to be distributed as per trust deed*

The state land administrator deposited a sum of money in the High Court, being compensation due to the applicant, upon acquiring a piece of land which was registered under the applicant's name. As the applicant was involved in an action resulting from a partnership dispute, the registrar ordered the applicant to be paid half of the sum and the other portion be retained until the disposal of the action. Before the High Court, the first respondent appealed for the release of the moneys retained, being privy to a trust deed executed by the applicant and it was added that the pending action was unrelated to the compensation paid. The applicant on the other hand contested the validity of the trust deed. In construing the trust deed, the issue before the High Court was whether applicant held the land upon trust for himself and for the first respondent.

Held, allowing the appeal with costs

(1) The interests of the trustees and the interests of the persons entitled to the benefit of the property should survive the acquisition of that property. There can always be distribution of trust property to a beneficiary indefeasibly entitled to his share if no other beneficiary is likely to suffer loss thereby (see p 687D).

(2) The applicant's contentions that the first respondent did not pay any single cent as premium and expenses for the land, and the trust deed was not explained to the applicant ran counter to the express provisions of the trust deed (see p 686D–E).

(3) As provided by O 5 r 4(2)(a) of the Rules of the High Court 1980, the present appeal concerns a matter of construction of the trust deed which plainly and obviously requires no viva voce evidence. Therefore, the applicant's submission that the issue of the existence of the trust deed could not be resolved by reference to affidavits in support of the originating summons was untenable (see p 686 B–C).

(4) The fact that the applicant had not commenced proceedings to seek a declaration that the trust deed was null and void as against the first respondent, or to remove the private caveat lodged by the first respondent, or to take steps to convert the originating summons to a writ indicated that there was absolutely no merit in any of the issues raised (see p 687A).

(5) The learned registrar's decision was clearly in error. The applicant held the land upon trust for himself and for the first respondent, as a result of which the first respondent is entitled to half a share in the compensation paid pursuant to the acquisition of the land (see p 684G).

[**Bahasa Malaysia summary**

Pentadbir tanah kerajaan telah mendepositkan sejumlah wang di Mahkamah Tinggi, sebagai pampasan yang perlu dibayar kepada pemohon, setelah memperoleh sebidang tanah yang telah didaftarkan di bawah nama pemohon. Memandangkan pemohon terlibat dalam satu tindakan yang wujud akibat daripada satu pertikaian perkongsian, pendaftar telah memerintahkan pemohon dibayar separuh daripada jumlah tersebut dan bahagian lain itu dikekalkan sehingga tindakan tersebut selesai. Di hadapan Mahkamah Tinggi, responden pertama telah merayu agar jumlah wang tersebut dilepaskan, kerana terlibat dalam suratikatan amanah yang disempurnakan oleh pemohon dan ditambah pula bahawa tindakan yang belum selesai tersebut tiada kaitan dengan pampasan yang dibayar. Pemohon sebaliknya mencabar kesahan suratikatan amanah tersebut. Dalam menafsir suratikatan amanah tersebut, persoalan di hadapan Mahkamah Tinggi adalah sama ada pemohon memegang tanah tersebut atas amanah bagi pihak beliau sendiri dam bagi pihak responden pertama.

Diputuskan, membenarkan rayuan tersebut dengan kos:

(1) Kepentingan pemegang amanah dan kepentingan individu yang berhak kepada faedah hartanah tersebut seharusnya mengatasi perolehan hartanah tersebut. Akan sentiasa terdapat pengagihan hartanah atas amanah terhadap seorang benefisiari yang tidak boleh disangkal berhak ke atas bahagiannya jika tiada benefisiari lain yang berkemungkinan menanggung kerugian sedemikian (lihat ms 687D).

(2) Hujah pemohon bahawa responden pertama tidak membayar satu senpun sebagai premium dan untuk perbelanjaan tanah tersebut, dan suratikatan amanah tersebut tidak dijelaskan kepada pemohon bertentangan dengan peruntukan-peruntukan nyata suratikatan amanah tersebut (lihat ms 686D–E).

(3) Sebagaimana yang diperuntukkan oleh A 5 k 4(2)(a) Kaedah-Kaedah Mahkamah Tinggi 1980, rayuan semasa adalah berkaitan satu perkara tentang pembentukan suratikatan amanah yang dengan jelas dan nyara tidak memerlukan apa-apa keterangan viva voce. Oleh itu, hujah pemohon bahawa persoalan yang wujud berhubung suratikatan amanah tersebut tidak boleh diselesaikan dengan merujuk kepada afidavit-afidavit sokongan kepada saman pemula tidak boleh dikekalkan (lihat ms 686B–C).

A (4) Hakikat bahawa pemohon tidak memulakan prosiding untuk memohon satu deklarasi bahawa suratikatan amanah tersebut adalah terbatal dan tidak sah terhadap responden pertama, atau untuk membatalkan kaveat persendirian yang dimasukkan oleh responden pertama, atau untuk mengambil langkah-langkah menukar saman pemula tersebut kepada satu writ menunjukkan
B bahawa tiada langsung merit dalam persoalan-persoalan yang ditimbulkan (lihat ms 687A).

(5) Keputusan pendaftar yang bijaksana dengan jelas salah. Pemohon menegaskan bahawa tanah atas amanah bagi pihak beliau sendiri dan bagi pihak responden pertama di mana responden pertama
C berhak kepada separuh daripada pampasan yang dibayar menurut perolehan tanah tersebut (lihat ms 684G).]

Notes

For cases on the construction of trust deeds, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2059–2062.
D

Cases referred to

Chin Sem Lin's Settlement Yong Tet Foong & Anor, Re v Chin Thin Lee & Ors [1971] 2 MLJ 152 (refd)
Goh Jong Cheng v MB Melwani Pte Ltd [1991] 1 MLJ 482 (distd)
E *Happy Shopping Plaza Sdn Bhd v Sun Properties Sdn Bhd & Ors* [1987] 1 MLJ 319 (refd)
Lim Eow Thoon v Lim Keng Chuan & Ors [1965] 2 MLJ 154 (folld)
Marshall v Marshall [1914] 1 Ch 192 (folld)
Nallammal & Anor v Karuppanan & Anor [1993] 3 MLJ 476 (distd)
F *National Land Finance Co-operative Society Ltd v Sharidal Sdn Bhd* [1983] 2 MLJ 211 (refd)
Syarikat Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd [1997] 1 CLJ 596 (distd)
Tan Jin Pek v Khoo Swee Swat & Ors [1957] 3 MC 122 (folld)

G **Legislation referred to**

Rules of the High Court 1980 O 5 r 4(2)(a), O 90 r 6

Krishna Dallumah (*Krishna Dallumah & Co*) for the applicant
FH D'Cruz (*Felix A Sennayah with him*) (*Sennayah & Co*) for the first respondent
H

Low Hop Bing J:

Appeal

This is an appeal in encl 21 lodged by the first respondent against the
I decision of the learned registrar who on 25 May 2001 ordered that half the sum deposited in court be retained until the final disposal of the Melaka High Court Civil Suit No 22–11–88 ('the civil suit').

Facts of the case

On 3 January 2001, the applicant Yeow Ho Bun applied by way of summons in chambers in encl 15 for an order that the sum of RM361,680 deposited by the Melaka Tengah Land Administrator in this court being the compensation ('the compensation') in respect of the acquisition of land held under LM2, Lot 626 in the Mukim of Bachang, in the district of Melaka Tengah ('the land') and interest accrued thereon pursuant to O 90 r 6 of the Rules of the High Court 1980 ('the RHC') or such other amount as may be deemed reasonable, on the basis that the applicant was the registered owner thereof which was acquired by the state government on 3 August 1995.

On the other hand, the first respondent claimed that half the compensation should be paid over to him as the beneficial owner of a half share in the land by virtue of a declaration of trust executed by the applicant on 7 April 1981, on the basis of which the first respondent has lodged a private caveat on the land, as affirmed in the second respondent's affidavit.

On 25 May 2001, the learned registrar who heard encl 15 ordered the release of RM180,840 representing half the compensation together with all interest accrued thereon to the applicant while the other half was ordered to be retained in court until the final disposal of the civil suit.

Submission for first respondent

Mr FH D'Cruz and Mr Felix A Sennayah, learned counsel for the first respondent, submitted that the other half of the compensation together with all interest accrued presently retained in court should be released to the first respondent by virtue of the existing trust, and that the civil suit concerns a partnership dispute, but the money paid for the land has nothing to do with the partnership funds.

It was also argued for the first respondent that the trust deed has been attested by an advocate and solicitor verifying the same in an affidavit in encl 30 and that by the equitable doctrine of conversion, the interest in the land has been converted to the compensation, in which case, the applicant's assertion that the trust deed was of no consequence was defeated by the affidavit of the said advocate and solicitor. He cited *Lim Eow Thoon v Lim Keng Chuan & Ors* [1965] 2 MLJ 154 in support.

They added that the learned registrar was in error and that the other half of the compensation should be released to the first respondent, relying on *Tan Jin Pek v Khoo Swee Swat & Ors* [1957] 3 MC 122.

Contention for applicant

Mr Krishna Dallumah, learned counsel for the applicant, contended that the trust deed covers only a half share in the land, and hence the other half share in the land is in the absolute right of the applicant, who now disputes the trust deed, as he alleges that he did not hold the land on trust for the first respondent since the first respondent allegedly did not even pay a single cent as premium and expenses for the land, not even from the partnership.

A He added that the issue of the existence of the trust deed cannot be resolved by reference to affidavits and asked for a full hearing, relying on the Court of Appeal decision in *Syarikat Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd* [1997] 1 CLJ 596.

It was also argued for the applicant that the trust deed was not explained to him, and that issue must be resolved by way of oral testimony, B citing *Nallammal & Anor v Karuppanan & Anor* [1993] 3 MLJ 476 and *Goh Jong Cheng v MB Melwani Pte Ltd* [1991] 1 MLJ 482 in support.

Another issue raised for the applicant was that the trust deed did not state that the money was paid out of the partnership, and why the trust deed was executed in 1981 when the land was granted in 1972.

C Even the date '7 March' was made an issue as the date of the trust deed was 7 April 1981.

Decision of the court

The question before me is simple and straightforward and may be stated as D follows:

> Upon a true construction of the trust deed dated 7 April 1981 executed by the applicant Yeow Ho Bun, the trustee, does the trustee hold the land upon trust for himself and for the first respondent Tee Beng Gak as a result of which the first respondent is entitled to half a share in the compensation paid pursuant to the acquisition of the land?

E

In order to arrive at an answer to this question, I shall first consider the submission for the applicant.

The applicant's contention that the first respondent did not pay any single cent as premium and expenses for the land appears to me to run counter to the express provision of the trust deed executed by the applicant F in the following words:

> AND WHEREAS all expenses and premiums in respect of the application for the said lease were paid in equal shares by the Trustee and TEE BENG GAK (NRIC No 0859266) of No 8259, Jalan Pokok Mangga, Malacca.

G In the face of such an express and clear provision in the trust deed, I do not think that the said contention presented for the applicant could have any reasonable prospect of being upheld.

As regards the applicant's submission that the issue of the existence of the trust deed could not be resolved by reference to affidavits in support of the originating summons, in my view, the short answer is to be found in O 5 H r 4(2)(a) of the RHC which reads as follows:

> Proceedings which may be begun by writ or originating summons (O 5 r 4)
>
> (2) Proceedings —
>
> (a) in which the sole or principal question at issue is or is likely to be, one of the construction of any written law or of any instrument I made under any written law, or of any deed, will, contract or other document, or some other question of law; or
>
> (b) ...

> are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 81 or for any other reason considers the proceedings more appropriate to be begun by writ.

The appeal before me concerns purely a matter of construction of the trust deed which plainly and obviously requires no viva voce evidence; see *National Land Finance Co-operative Society Ltd v Sharidal Sdn Bhd* [1983] 2 MLJ 211; *Happy Shopping Plaza Sdn Bhd v Sun Properties Sdn Bhd & Ors* [1987] 1 MLJ 319 (both cases concern the construction of sale and purchase agreement); *Re Chin Sem Lin's Settlement Yong Tet Foong & Anor v Chin Thin Lee & Ors* [1971] 2 MLJ 152 (construction of deed settlement).

Syarikat Telekom Malaysia, which was cited for the applicant is not even remotely relevant to the proposition of law which was purportedly presented for the applicant in asking for a full hearing. That case concerns an inquiry into the issue of damages, which the learned judge of the first instance proceeded on affidavit evidence and that decision was upheld by the Court of Appeal.

Counsel's allegation that the trust deed was not explained to the applicant is again contrary to the express provisions of the contemporaneous document ie the trust deed which was attested by Ms Pang Siew Fian who is a very senior member of the Malaysian Bar and the attestation clause expressly states:

> I, PANG SIEW FIAN, an Advocate and Solicitor of the High Court in Malaya practising at 1st Floor, No 34, Jalan Laksamana, Malacca hereby testify that the above signature of the Declarant was written in my presence this 7th day of April, 1981 and is according to my own personal knowledge the true signature of YEOW HO BUN who has acknowledged to me :
>
> i) that he is of full age;
>
> ii) that he has voluntarily executed this instrument; and
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> iii) that he understands the contents and effect thereof.
>
> As witness my hand this 7th day of April 1981.
>
> sgd.
>
> Advocate & Solicitor

The aforesaid contention advanced for the applicant defies logic and certainly goes beyond my power of comprehension.

The issues in *Nallammal*, cited for the applicant, relate to fraud, misrepresentation, *non est factum* and other wrongfulness whereas there are no such allegations in the appeal before me. Reliance of the applicant on that decision is misconceived.

Similarly, in *Goh Jong Cheng*, the issue was *non est factum* which is not the issue in this appeal before me.

A The fact that the applicant has not commenced proceedings to seek a declaration that the trust deed was null and void as against the first respondent or to remove the private caveat lodged by the first respondent, or to take steps to convert the originating summons to a writ, speaks volumes against the applicant. To say the least, there is absolutely no merit in any of the issues raised for the applicant.

B In relation to the dates, 7 March and 7 April 1981 raised for the applicant, I have anxiously perused the trust deed. It is my specific finding that there was clearly a clerical error or slip which has been rectified by the attesting solicitor who has duly initialled thereon. I am unable to see any issue which may be credibly raised for the applicant in relation to the date.

C In *Lim Eow Thoon*, Hepworth J held, inter alia, that the interests of the trustees and the interests of the persons entitled to the benefit of the property should survive the acquisition of that property.

In *Tan Jin Pek*, Smith J applied the principle enunciated in *Marshall v Marshall* [1914] 1 Ch 192, at p 199 that there can always be distribution of D trust property to a beneficiary indefeasibly entitled to his share if no other beneficiary is likely to suffer loss thereby, as appears to be the case here.

On the foregoing grounds, I hold that the answer to the aforesaid question is in the affirmative. I further hold that the learned registrar was clearly in error when she refused to release the other half of the compensation to the first respondent. In the circumstances, I allow this E appeal with costs, set aside the order of the learned registrar and order that the other half of the compensation together with all interest accrued, be released to the first respondent.

Appeal allowed with costs.

F Reported by M Maheswaran

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